

MOTION SEEKING PERMISSION

JOSEPH MIZZONI #68549  
HIGH DESERT STATE PRISON  
PO BOX 650  
INDIAN SPRINGS, NV. 89070

<input checked="" type="checkbox"/> FILED	<input type="checkbox"/> RECEIVED
<input type="checkbox"/> ENTERED	<input type="checkbox"/> SERVED ON
COUNSEL/PARTIES OF RECORD	
AUG 08 2017	
CLERK US DISTRICT COURT DISTRICT OF NEVADA	
BY: _____	DEPUTY _____

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

JOSEPH MIZZONI  
Plaintiff

VS.

STATE OF NEVADA et al  
Defendants

CASE# 3:15-CV-00499-MMD-WGC  
"MOTION RESPONDING TO 7-24-17 HEARING"/AND  
"MOTION SEEKING PERMISSION TO  
FILE A SPOLIATION/DESTRUCTION  
OF VIDEO TAPE EVIDENCE AGAINST  
DEFENDANTS"  
"FOR RELIEF"

COMES NOW, the plaintiff Joseph Mizzone #68549 PRO-SE  
Respectfully request to file the above Motion on Defendant's  
For Destroying, Loss, or Destroying Video Tape evidence on his  
§1983 Civil Rights Case Pursuant to USC 42 §1983.

See, Haines v. Kerner, 404 U.S. 519 (1972) (Allegations of a pro-se complaint are  
held to less standards than formal pleadings drafted by lawyers).

EXHIBITS A,B,C,D,E,F IS ATTACHED

# STATEMENT OF FACTS IN SUPPORT I

1 (FACT 1.) Plaintiff filed his First Amended Complaint on the 20<sup>th</sup> day of  
2 March, 2016.

3  
4 (FACT 2.) On this First Amended Complaint plaintiff requested video on  
5 (PAGE 3 B: Nature of the Case to Page 3 C) through out, and at  
6 the Disciplinary Hearing on 5-1-15 as stated in the 81983 Complaint.  
7 And Plaintiff (Attached Exhibits), one being a INMATE REQUEST FORM  
8 dated the 5<sup>th</sup> day of April, 2015 to Warden Ms. Walsh. I asked for  
9 the Video and Witness for my Lawyer, Court and my 5-1-15 Disciplinary.  
10 She responds: "ADHERE TO THE PROCESS." See; EXHIBIT-A.

11  
12 (FACT 4.) This Courts Order filed 9-2-16 (Doc # 10) On (Page 4 Line 6-12); (PAGE 4  
13 Line 19-20); (Page 5 Line 13-20); (Page 6 Line 25), all in which show this  
14 Court recognized the Evidence, Witnesses and Video.

15  
16 (FACT 7.) On 2-9-17 (Doc # 31) this Court Ordered a "SCHEDULING ORDER  
17 FOR CIVIL RIGHTS ACTION FILED BY INCARCERATED PROSE  
18 PLAINTIFFS, ordering Discovery by May 24, 2017.

19  
20 (FACT 8.) On March 9, 2017 Defendant Brannon admits on Interrogatories  
21 Question 5, that theres Video working in Units 5, 4, 7, and 8 on 3-28-15.  
22 Also Interrogatories 6 same question is there Video, yes there is. He also admits  
23 in the 3-31-2017 Admissions theres Video.

24  
25 (FACT 9.) Plaintiff did file his "REQUEST TO DEFENDENTS FOR DISCOVERY  
26 CONFERENCE UNDER FRCP 37(a)(1) LETTER dated March 21, 2017, and on  
27 (Page 1 Line 16-27) Plaintiff requested any/all video evidence, and I specified Units  
28 5, 4, 7, 8 at NCCC Prison 3-28-15. -2-

## STATEMENT OF FACTS IN SUPPORT I

(Continued)

1 (FACT 10.) On a Courts Order dated 4-17-17 (Doc#47) on (page 4  
 2 Bottom of page) it states: "The Court is not prejudging this issues but  
 3 on first blush it appears that the "vidio evidence" which plaintiff  
 4 claims "has been admitted" to exist" is central to this case, and plaintiff  
 5 should be permitted to review that evidence in a manner which  
 6 alleviates any safety and security concerns espoused in Brannan's objections.

8 (FACT 11.) Defendants were ordered on June 15, 2017 MINUTES OF PROCEEDINGS  
 9 (Doc#78) on (page 4) to this: Defendants "shall" submit the Vidio and  
 10 pictures to Court no later than Friday 6-23-17.

12 ~~(FACT 12.) Defendants file "MOTION FOR ENLARGEMENT OF TIME TO REPLY~~  
 13 ~~TO PLAINTIFFS "MOTION TO RESPOND TO NOTICE AVAILABILITY OF~~  
 14 ~~VIDIO MARCH 28, 2015 AND OPPOSE~~ VIDIO

16 (FACT 12.) Defendants file "NOTICE AVAILABILITY OF VIDEO  
 17 MARCH 28, 2015. On (page 1 Line 27-28) states: Defendants Motion For  
 18 Summary Judgment in Case No. 3:15-cv-00313, Inmate Mizzoni raised the  
 19 issues of Vidio tape footage. In there reply to Mizzoni's opposition, Defendants  
 20 apprised this, (page 2 Line 4-5) (continued), Court ord Inmate Mizzoni that the  
 21 incident on March 28, 2015 occurred in the rotunda of housing unit 5, on area  
 22 that does not have Vidio coverage; therefore, no vidio footage of the incident  
 23 exists. (ECF No. 62 in 3:15-cv-00313-MMD-VRC at 5-6). The opposition also  
 24 outlined that an investigation was conducted and no Vidio footage from  
 25 any part of Northern Nevada Correctional Center ("NNCC") capturing any  
 26 portion of the subject incident exists. (Id.)

27 This is spoliation of evidence of Vidio which is on (page 2 Line 6-21), And  
 28 it states: In preparation

I.

## STATEMENT OF FACTS IN SUPPORT I

(continued)

1 For the June 15, 2017 hearing in this matter on Inmate Mirzoni's Motion  
 2 Seek Permission to Obtain by Court Order Video Tape (EEF No. 50), the  
 3 undersigned requested her clients double check their files regarding the  
 4 existence of Video footage on the March 28, 2015 incident. The  
 5 Video footage taken and available on March 28, 2015 of housing units  
 6 4, 5, 7, and 8 at MNCC for the time frame of 8:00 PM and 9:30 PM does not  
 7 depict the incident involving Inmate Mirzoni. (Exh. A).

8 Further, the video taken by the cameras in housing units 4, 5, 7, and 8  
 9 is on a recording loop; therefore, the video recording is not indefinitely  
 10 retained by the NDOC. (Id.) The only time a video recording from a  
 11 camera in housing units 4, 5, 7, and 8 is indefinitely kept by the NDOC  
 12 is if there is an incident (i.e., riot, assault against a correctional officer,  
 13 assault against inmate) that occurred and the incident was recorded on video.  
 14 (Id.) If that occurs, the NDOC "will" make a copy of the video recording  
 15 and retain the recording for its records. (Id.) Since the March 28, 2015  
 16 incident occurred in an area where there is no video camera coverage, and there  
 17 is no recorded video coverage of an incident from March 28, 2015 involving  
 18 Inmate Mirzoni, there is no video footage available to provide Mirzoni's  
 19 "The video footage from that date has been recorded over" as the  
 20 video footage is on a recording loop and is not indefinitely retained  
 21 by NDOC or MNCC.  
 22

## II PLAINTIFFS ARGUMENT

23 1  
 24 On the above Defendant's Motion it says that Defendants on the agent  
 25 CASE# 3:15-CV-00313-MMD-WGC filed a response on Doc# 62 at 5-6 there  
 26 is no video tape evidence on Units 4, 5, 7 and 8. The Judge brought this up 7-24-17  
 27 and stated plaintiff did not oppose or respond. Plaintiff has not had a chance  
 28 to oppose the (Doc# 62)

II.PLAINTIFFS ARGUMENT

(continued)

1 Declaration of Ronald Schreckengost EXHIBIT 3-13: DEF EXHIBIT 1-001.

2 The reason plaintiff didn't oppose or respond to this because this was  
3 a "Reply in Support of Defendants Motion For Summary Judgment  
4 dated the 6 day of December 2016, and it was the final response to  
5 the Summary Judgment. After this motion the Court made a decision  
6 on the Summary Judgment # 3:15-cv-00313-MMD-WGC on a "REPORT AND  
7 RECOMMENDATION OF U.S. MAGISTRATE JUDGE dated 3-7-17 (Doc# 71).

8 Then the Defendants filed a "DEFENDANTS PARTIAL OBJECTION TO REPORT  
9 AND RECOMMENDATION OF US MAGISTRATE JUDGE date the 21 day of  
10 March 2017. To this day the Magistrate Judge has not made a  
11 final decision to any of this, so therefore it is delaying plaintiffs  
12 Spoliation Motion for this case to of Destruction of evidence, and  
13 therefore the Judge Cobb should not use this Declaration as a reason  
14 to not make the Defendants produce the crucial Video Evidence by  
15 Court order not the AG Ms. Albright's version. See; EXHIBIT E See; EXHIBIT A-B.

16 Plaintiff points out that on (page 2 Line 6-20) of Defendants "Notice  
17 AVAILABILITY OF VIDEO MARCH 28, 2015, dated the 20 day of June, 2017,  
18 that on (Line 12-16) it says: NOCC keeps video indefinitely if the following  
19 happens (i.e., riot, assault against a correctional officer, assault against an inmate)

20 Plaintiff points out on 3-28-15 spontaneous force/force was used in  
21 Unit 5 to assist C/O C. Smith. Then plaintiff was cuffed on his legs" his  
22 hands were already cuffed, then all C/O's state on their C/O Reports that  
23 they used force to escort plaintiff from Unit 5 to Unit 8 to Unit 7.

SEE: > 24 Per (NOCC) AR USE OF FORCE AR 405 B(a) pg 6 of 18 also (b) and (c) and page 7  
EX-3 25 of 18 (d) IF the use of force is still occurring when Staff Video recorder arrives  
Attached 26 the incidents "shall" be recorded to continue the unfolding events while waiting  
27 for a response team, even if through windows, fences, bars, or even if far  
28 away etc...

-5- (AR 405 IS FOR ANY AND ALL FORCE, NOT JUST  
CELL EXTRACTATIONS)



PLAINTIFFS ARGUMENT

(Continued)

1 This is Spontaneous Use of Force. See; EX-B AR 405 pg 6 of 18 (91);  
 2 Where force was used spontaneously, regardless of injuries reported  
 3 contemporaneous with the event, the area supervisors/incident commander  
 4 "shall" immediately review, if available any unit Video Surveillance that may  
 5 have captured the Use of Force.

6 (b.) If the Use of Force was captured on Video, from "Any Angle" on camera  
 7 the area Supervisor/incident commander "shall" be responsible for preserving  
 8 that recording in a manner and location that is easily retrievable in the  
 9 event review is needed. The Video "must" be maintained for no less than  
 10 (3) Three Years from the date force was used.

11 (c.) If no camras were operational in that Unit or no cameras captured  
 12 the Use of Force, the area supervisor/incident commander "shall" make a  
 13 notice of same in the Use of Force Incident Report.

14 <sup>AR 405</sup> pg 7 of 18 (d.) In addition to and apart from "any" surveillance footage from  
 15 stationary camras that may exist, video footage "shall" also be recorded  
 16 via a HandHeld Camras follows:

17 • As soon as the shift supervisor becomes aware that force is  
 18 being used or has been used, a staff member "shall" be directed to  
 19 immediately obtain a Hand Held Video Camra and "shall" be ordered to the  
 20 scene where force has been used. See; <sup>(Didn't Follow AR 405)</sup> MEZZONE 313: DEF EXHA-005 Ms J. Roberson.

21 • Immediately upon arrival to the scene, the staff video recorder  
 22 "shall" begin recording, noting the time and date the recording begins and  
 23 identify himself/herself as video recorder. The staff video recorder "shall"  
 24 continue to take footage until area supervisor/incident commander decides  
 25 the incident is over and instructs the staff video recorder to cease  
 26 recording. See; MEZZONE 313: DEF EX A-005 Ms J. Roberson Shift Sergeant. She  
 27 didn't follow (NDOC) AR 405. "Where's the Handheld Video from Unit 5 to Unit 8  
 28 on use of force escort by (14) Officers?" - 6- (The incident didn't end until plaintiff was secure in)  
 UNET 7.

## PLAINTIFFS ARGUMENT

(Continued)

1. She, Ms. Robertson said she had to go to operations for a new camera,  
 2. and she was a part of the escort from Unit 5 to Unit 8 to Unit 7. She  
 3. says she had a camera, "where's the Video Camera Tape?"; the AR 405 says a  
 4. Video Camera is to be used not a regular camera. This a spoliation/  
 5. destruction of evidence or not gathering the evidence at all. When she  
 6. came in to Unit 5 she was on one knee pointing the camera/video camera  
 7. directly at me when I saw her and the C/O's were pounding and  
 8. grinding my head and body on the concrete ground while I was cuffed  
 9. and C/O's held me down. Where's that Video? I have a right to hand  
 10. held video by <sup>(NOOC)</sup> AR 405/NRS LAW. Also, Responding Sgt. Steven Crowder, John Hill  
 11. senior E/O; Shift Sergeant John Henley all never followed NOOC AR 405 for  
 12. Hand Held Video Camera evidence. See; MEZZONE 313 DEF EXH A-003; 005.  
 13. Staff Involvement. And see; MEZZONE 313: DEF EXH A-001 FRANK SHERMAN  
 14. LT. Shift Command. He states he didn't see any of the incident "in Unit 5 only."  
 15. Where is the rest of the stationary camera footage from Units 5 outside, Unit 4  
 16. outside, Unit 8 inside/out, and Unit 7 outside/in? "for the continued use of  
 17. force from one Unit to another?" Plaintiff was hand cuffed by C. Smith then  
 18. leg shackled by Officer Joel Hightower in which Hightower and Gardner say they  
 19. used more force to escort plaintiff to infirmary "this force was excessive." Once  
 20. plaintiff was brought to his feet Officers Hill, Gardner, Henley, Hightower,  
 21. Crowder, C. Smith, Garrica, Ardinger, Highline, Sammel, and more C/O's dragged plaintiff  
 22. backwards from Unit 5 to Unit 8 (with use of force) so there is supposed to  
 23. be Hand Held and Stationary Camera Video per AR 405, and is to be saved (3)  
 24. years to view "just like this case"; Where is it? NOOC Destroyed, loss it, and  
 25. never even took Video required by their own Administration Regulations  
 26. AR 405. This is spoliation of Video evidence. See; MEZZONE 313: DEF EXH A-  
 27. 001-010 C/O's reports; See; EXHIBIT-C. See; AR 405 (NOOC) EXHIBIT B.  
 28. See; NOOC file, EXHIBIT-A.

### PLAINTIFFS' ARGUMENT/CASE LAWS (continued)

1. Because of these events of use of force the whole incident from start  
 2. to finish is to be Video Taped. See; Morquez v. Mann, 192 A.D. 2d 100,  
 3. 600 N.Y.S.2d 285 (3d Dept. 1993) (Failure of hearing officer to allow inmate to  
 4. review Video Tape of incident in question at disciplinary hearing denied inmate his  
 5. Constitutional right to answer the evidence therefore, the record of the  
 6. incident should be expunged.) See; Wolff v. McDonnell, 418 U.S. 539, 94 S.  
 7. Ct 2963, 41 L.Ed 2d 935 (1974). See; Muhammed V. Butler, 655 F.Supp 1470,  
 8. 1472 (D.N.J. 1987) (Hearing officers refusal to allow the inmate to hear  
 9. taped telephone recording or even to see transcript of the call inmate made  
 10. did not pass Constitutional muster, and that the inmates right to present a  
 11. defense was clearly abridged by his inability to review these statements.)  
 12. See; Yang v. Lynch, 846 F.2d 960, 963 (4th Cir 1988) (Due process may require  
 13. production of evidence when it is dispositive item of proof; it is critical to  
 14. the inmates defense; it is in the custody of prison officials and it could be  
 15. produced without impairing institutional concerns") See; Little v. Armontrout,  
 16. 835 F.2d 1240 (8th Cir 1987) (Destruction of tapes violate due process  
 17. if they had exculpatatory value which was apparent before there  
 18. destruction.) The destruction of Video Tapes or none took at all is  
 19. a Violation of plaintiffs Due Process Rights in its self. See; Northern  
 20. Nevada Association of Injured Workers V. Nevada State Indus. Insurance  
 21. System (rev. 1991) 807 P.2d 728, 107 Nev. 108, says; "State Agencies "must"  
 22. follow their own Rules. Failure to follow a Non-Discretionary Rule Constitutes a  
 23. Non-Discretionary Act." (See; NRS 41.031, NRS 41.032, and NRS 616.500(5))  
 24. Where Nevada Dept. Of Corrections Administration Regulations, OP's, and  
 25. IP's say that something has to be done, ie "Forced movements" and/or  
 26. Extractions must be Video Taped, The absence of a Video, (Because one wasn't  
 27. taken or because it was lost) : (1) Violates a non-discretionary Policy; (2)  
 28. It Constitutes a



## PLAINTIFFS ARGUMENT / CASE LAWS

(continued)

1 Non-Discretionary Act; <3> It Constitutes Destruction of Evidence, (ITS Spoliation).

2 See; Kimberly Bass Davis V. Katus Davis (Nev. 2006) 134 P.3d 103 122

3 Nev. 442; Says: "Destruction of Evidence that is not willfull still evidence

4 would have been unfavorable to the Destroyer "Destruction Evidence that

5 is willfull warrants Jury Instructions for Presumption that destroyed evidence

6 would have been unfavorable to the Destroyer." The difference between and

7 inference and presumption is that while the Jury "MUST" accept a

8 presumption as true, it does not have to accept an inference as true."

9 Where the destroyer destruction of evidence violates a written policy, said

10 Destruction is deemed willful." NRS 41.031 says that: "The State of Nevada;

11 its Agencies; and their employees waive their immunity from being sued in

12 State Court for Non-Discretionary acts." (Also see; NRS. 037). Where law

13 suit is against NDOC Employee, destruction of evidence by "any" other

14 NDOC Employee is still held against law suit party under law ~~and~~

15 of Agency." See; Plaintiffs Grievance # 2006-29-9867 / EXHIBIT E VIDEO

16 EVIDENCE dated 4-15-15 only 18 Days After 3-28-15 incident. See; MIZIONE 313: DEF.

17 EXHC-002 Responding Medical Nurse Stefanie Andrews plaintiffs intenal injuries.

IV. CONCLUSION

19 Wherefore Plaintiff shows "Points and Authorities" and good cause to why

20 the 3-28-15 Video by Hand Held and Stationary Video for Units 4, 5, 7, 8 at

21 (NINCC) Prison is causal to plaintiffs due process rights and evidence to show and

22 prove his facts of case as said in his 5/983 Complaint; And that the Defendants

23 and there administration destroyed, loss, or none at all, pre-AE 405 NDOC, on purpose

24 to withhold evidence of Excessive Force Used or Force Used to violate the plaintiffs

25 Due Process Rights under the 14<sup>th</sup> Amend USCA before a Due process hearing, and destroying

26 Video Evidence that could be used against them NDOC Employees to avoid prosecution of

27 plaintiffs case. Plaintiff ask for all his relief on this case #3:15-cv-00499-MMD-WGC, or proper

28 Jury instructions to default Defendants.

-9- (Plaintiff did as ordered on 7-24-17)

## IV CONCLUSION

(continued)

1 And the Video that the 3-28-15 Shift Commander Lt. Frank Sherman  
 2 viewed as he stated in his C/O Reports is crucial to this case #3:15-cv  
 3 00499-MMD-WGC to show witnesses that were in the rotunda.  
 4 Mr Frank Sherman is sposed to preserve that video to. It shows Unit 5  
 5 A wing, B wing, and C wings, with a ~~camera~~ camera at ~~the~~ each wing  
 6 coming and going from Rotunda to the Wings or "vis versa", and  
 7 with that Video it will show all the inmates that Defendant  
 8 C. Smith said on his Disciplinary Report in the Rotunda, came and  
 9 going to the Rotund or leaving the Rotund at 8pm or before, and  
 10 Plaintiff has a Constitutional Right to Confront those Inmate  
 11 Witnesses in person or by Affidavit to get there version of events  
 12 that took place that night, and so the Video will show the  
 13 inmates came from the rotunda when the responding officers came  
 14 in the Unit 5 and said Lock Down. Also (NDOC) or (IGA) Investigators  
 15 should have that Video and witness statements or Interviews to  
 16 what took place that night, Where is all this evidence? Once  
 17 again with out it or the Video this is clearly destruction of evidence  
 18 and Failure to investigate which is spoliation. See; <sup>NDOC</sup> AR 405. See; MEZZONI

19 313: DEF EXH A-001 Shift Commander Frank Sherman, ~~Shift Commander Frank Sherman~~

20 Also if the Court looks at the C/O's reports the Video will show in  
 21 Unit 5 - Wings the two inmates sitting on the floor and restrained them  
 22 when they went back to there cells from the Rotunda Floor. Where the  
 23 Video and the statements/names of those witness inmates that Officer  
 24 Heidi Dier/HKA states on her officer report as a witness. See; MEZZONI  
 25 313: DEF EXH A-009. Once again Spoliation/Destruction Evidence and Failure  
 26 to Investigate. Plaintiff still ask for relief of damages or Jury instructions of destruction  
 27 of evidence on case at trial. Plaintiff ask to reverse the 7-24-17 Decision and demand  
 28 Any/All Video by Court Order. 9-A See; Hart v. Gomez, 174 F.3d 1067, 1070 (9th Cir 1999)

AFFIDAVIT OF PLAINTIFF JOSEPH MEZZONE #68549 IN-PRO-SE

STATE OF NEVADA.)

: SS JOSEPH MEZZONE

COUNTY OF CLARK)

(1.) Plaintiff Sworn in support of the Motion duly and says;

(2.) Plaintiff in Pro-se Joseph Mezzone #68549 in support of the affidavit  
here for a "MOTION RESPONDING TO 7-24-17 HEARING"/AND "MOTION  
SEEKING PERMISSION TO FILE A SPOLIATION/DESTRUCTION OF  
VIDEO TAPE EVIDENCE AGAINST DEFENDANTS" FOR RELIEF" on his  
§1983 IN THE UNITED STATES DISTRICT COURT DISTRICT OF NEVADA and  
does so in the truth under penalty of perjury USC § 1746/NRS LAWS.

RESPECTFULLY SUBMITTED  
this 31 day of July 2017

BY: Joseph Mezzone  
Joseph Mezzone  
#68549

**CERTIFICATE OF SERVICE BY MAILING**

I, JOSEPH MEZANI #68549, hereby certify, pursuant to NRCP 5(b), that on this 31  
 day of July, 2017, I mailed a true and correct copy of the foregoing, "MOTION RESPONDING  
TO 7-24-17 HEARING AND "MOTION SEEKING PERMISSION TO FILE A SPOILATION /  
DESTRUCTION OF ~~THE~~ VIDEO TAPE EVIDENCE AGAINST DEFENDANTS FOR RELIEF  
 by depositing it in the High Desert State Prison, Legal Library, First-Class Postage, fully prepaid,  
 addressed as follows:

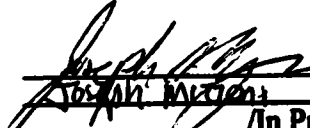
1) CLERK, US DISTRICT COURT  
DISTRICT OF NEVADA  
400 S. VIRGINIA STREET  
Room # 301  
Reno, Nev. 89501

2) Office of Attorney Gen / Nev  
MS ALBRIGHT  
100 N. Carson Street  
CARSON CITY, NEV.  
89701-4707

3) Address Plaintiff  
High Desert State Prison  
PO Box 650  
Indian Springs NV 89070

CC:FILE

DATED: this 31 day of July, 2017.

  
Joseph Mezani #68549  
 /In Propria Personam  
 Post Office box 650 [HDSP]  
 Indian Springs, Nevada 89018  
IN FORMA PAUPERIS:

EXHIBITS-A

EXHIBITS-A



## INMATE REQUEST FORM

1.) INMATE NAME	DOC #	2.) HOUSING UNIT	3.) DATE
Joseph Mizzoni	68549	7-B-62	4-5-15

4.) REQUEST FORM TO: (CHECK BOX)

☐ CASEWORKER    ☐ MEDICAL    ☐ LAW LIBRARY    ☐ CANTEEN  
☐ EDUCATION    ☐ VISITING    ☐ SHIFT COMMAND    ☐ DENTAL  
☐ LAUNDRY    ☐ PROPERTY ROOM    ☒ OTHER

5.) NAME OF INDIVIDUAL TO CONTACT: MS WALSH (Please Return all Video/Still pictures)  
 FOR MY LAWYER and Carl

6.) REQUEST: (PRINT BELOW) MAN, I am in 7-B-62 I went to a hearing on 4-4-15  
and Received my Notice of charges and was read everything in C/O Smith's  
Version Unit 5 on 3-28-15 he said he order inmates to look it up and they  
did; then he said he ordered several "Inmates" to get back because this  
retunda was full of other inmates. AT the hearing I requested those  
inmates in the retunda and around myself and C/O Smith NAMES on  
Affidavits to or any other inmates version of events to be at my disciplinary  
Also please request all video/still pictures from inside Unit 5 to 7-A-38 on  
3-28-15 in order to confront witnesses and evidence with charges against me. Thank You

7.) INMATE SIGNATURE

8.) RECEIVING STAFF SIGNATURE

DATE

9.) RESPONSE TO INMATE

Adhere to the process

10.) RESPONDING STAFF SIGNATURE

DATE

EXHIBITS-B

EXHIBITS-B

EX B

Joseph  
M. Tan  
H68849

## ADMINISTRATIVE REGULATION 405

### USE OF FORCE

**Supersedes:** AR 405 (Temporary 6/23/11) AR 405 (Temporary, 03/03/16)  
AR 405 (Temporary 5/25/16) AR 405 8/16/16,  
AR 405 (Temporary 11/3/16)

**Effective Date:** 11/16/16

\* **AUTHORITY:** NRS 209.131, 209.161, 212.090 and 212.190

### RESPONSIBILITY

1. The Warden/Division Head is responsible for the overall execution of this regulation. Direct supervision of this regulation is the responsibility of the Shift Supervisor (institutions/facilities) and/or the Transportation Lieutenant/Sergeant in regards to Central Transportation Division. The Inspector General in regards to the Inspector General's Office.
2. The Warden at each institution, Central Transportation Lieutenant, the Inspector General; shall ensure that all assigned staff is trained and have signed an acknowledgement statement that they have read, know and understand this regulation. A copy of their acknowledgement shall be maintained in each staff member's training file.
3. It is the responsibility of all employees who may be required to use force as part of their duties to understand and comply with the Use of Force policy, related procedures, use of equipment and attend and understand relevant use of force training.

### DEFINITIONS

**Authorized Personnel** – A person who has received the prescribed NDOC training in the application of Use of Force equipment or tactics, and whose qualifications are up-to-date. Any person who volunteers, is contracted by or is employed by the NDOC is authorized to defend themselves or others from attack. A Correctional Officer Trainee or Correctional Officer who has not completed the Basic Academy and has not passed the Peace Officers Standards and Training (POST) certification exam are authorized to defend themselves and others from attack. Only certified Peace Officers who are current on their qualifications shall be authorized to utilize force tactics, tools, devices, weapons or other methods authorized by the Department Director.

**Lethal Force** –

- All C6's  
Blows to  
head*
- \* **Great Bodily Injury** - Great bodily injury is any bodily injury that creates a substantial risk of death, such as but not limited to, stab wounds that cause substantial bleeding strike vital organs or (repeated blows to the head) with kicks or with a blunt instrument.

#### 405.01 USE OF FORCE GENERAL PROVISIONS

The NDOC shall operate under this use of force policy that defines staff responsibilities and limitations concerning the use of force while still allowing discretion in the appropriate application of force. The policy provides staff with the appropriate guidance on the permissible Use of Force. It ensures discipline is imposed for violations of the Use of Force policy, procedures or training.

It is the policy of the NDOC to authorize the use of physical force when and only to the extent that is reasonably believed to be necessary as specified in these rules. Staff is authorized to use that amount of force that is objectively reasonable to overcome a threat thereby minimizing the risk of injury to the officer, the threat and the public.

- \* At no time are staff permitted to use force for punishment, retaliation, or discipline. \*

*No All C6  
Excessive  
Force Used  
Drugging &  
me across  
yards?*

Force shall be used only when reasonably necessary to subdue an attacker, overcome resistance, affect custody, or to gain compliance with a lawful order. It is the policy of the NDOC to accomplish the educational, treatment and supervision functions with minimal reliance on the use of force. Staff may use reasonable force as required in the performance of their duties, (but unnecessary or excessive force shall not be used.) If staff, at any point, determines the situation can be resolved without any further use of force, staff shall terminate the use of force.

All the facility Operational Procedures must conform to the provisions in this Administrative Regulation.

#### 405.02 STAFF TRAINING INVOLVING USE OF FORCE

- Physical  
restraints  
is force*
1. All personnel shall receive training and be qualified prior to being assigned to a position involving possible Use of Force and being authorized to use any force related equipment such as physical restraints, firearms, projectile launchers, chemical agents (CS/OC), taser or similar technology or batons. A staff member employed in positions that are authorized to use force-related equipment shall receive annual refresher and semi-annual firearms qualification training in the correct use of all equipment to maintain their established proficiency levels.
  2. The application of force when using any authorized equipment must be consistent with training. (For example; intentional strikes to the head or neck are not consistent with training for the side handle baton.) Shots to the head with 40 mm launcher are not consistent with training. (The use of carotid or choke holds is not authorized.)

- \* *No  
choke holds*
3. Training shall include:

- Hand cuffs  
see PR

medial

cell extraction

- Equipment  
Games/Video



(SHALL BE  
VIDEO)

d. In addition to and apart from any surveillance footage from stationary cameras that may exist, video footage shall also be recorded via a hand-held camera, as follows:

~~Handheld~~  
Video  
Camera

• As soon as the shift supervisor becomes aware that force is being used or has been used, a staff member shall be directed to immediately obtain a handheld video camera and shall be ordered to the scene where force has been used.

• Immediately upon arrival to the scene, the staff video recorder shall begin recording, noting the time and date the recording begins and identify himself/herself as video recorder. The staff video recorder shall continue to take footage until the area supervisor/incident commander decides the incident is over and instructs the staff video recorder to cease recording.

• For any breaks in recording, the recording staff member must sign back on with the date, time and reason for the break in recording.

\* If the Use of Force is still occurring when the staff video recorder arrives, the incidents shall be recorded to capture the unfolding events while waiting for a response team, even if through windows, fences, bars, or even if far away, etc. Staff shall not place themselves in any danger to capture the events.

\* C. The Warden/Division head shall ensure that Use of Force Operational Procedures are specific on the process for the recording of Use of Force incidents and storage of the video recordings.

#### 405.04 AUTHORIZATION FOR THE USE OF LESS LETHAL FORCE

"Less lethal force" may be used in the following situations:

1. Self-defense;
2. Defense of others;
3. Prevention of self-injurious behavior;
4. Maintaining order and control in a facility, including prevention of damage to state property;
5. Prevention of escape from any security level;
6. Prevention of the commission of a felony by an inmate;

#### 405.05 LESS LETHAL FORCE

- F. Pepperball or FN 303 less lethal launcher using compressed air to launch direct impact or chemical agents to temporarily incapacitate a threat. These Launchers may only be deployed by trained and qualified Authorized Personnel.

Decontamination - If chemical agents are utilized in a planned use of force or spontaneous use of force, the inmate shall be decontaminated as soon as the inmate is in restraints and the decontamination can be conducted in a safe manner. Inmate(s) affected shall also be seen by medical personnel as soon as practicable upon containment of incident. The decontamination and medical evaluation shall be documented in the Incident Report by Supervisor handling the planned use of force.

Choke  
Hb125 (Choke or carotid holds is not authorized use of force techniques.) A head lock is not considered a choke or carotid hold.

- \* 3. Wardens shall ensure through Operational Procedures where and how these tools shall be utilized throughout the institution.

A loud and clear verbal warning or order shall be given. Verbal warnings shall be issued before and repeated while less lethal munitions or chemical agents are being deployed.

If the verbal warnings or orders fail to stop the prohibited activity, the Officer may then deploy less lethal force tools to prevent further harm of another person or property. Verbal warnings shall be repeated continuously while less lethal munitions or chemical agents are being deployed. Force shall cease immediately upon gaining compliance.

The use of less than lethal force are never to be used to stop verbal abuse or other non-threatening behavior

#### 405.06 AUTHORIZATION FOR USE OF LETHAL FORCE

Staff has the obligation and responsibility to exercise discipline, caution, restraint and good judgment when using potentially lethal force. Lethal force may be used upon the reasonable belief that staff life or safety, or the life or safety of another, is in imminent jeopardy of death or substantial bodily harm given the totality of the circumstances known to the officer at the time of his/her action. Staff must keep in mind that the use of potentially lethal force presents a danger to the subject and to innocent parties. Only trained and qualified staff are authorized to use lethal force, and only as a last resort. Officers shall consider other reasonable means of control before resorting to the use of deadly force as time and circumstances safely permit.

Lethal force is any force which carries a substantial risk that it may result in death or serious or great bodily injury. Lethal force may be used only when imminent jeopardy exists regarding the following situations:

#### **405.08 EMERGENCY RESPONSE**

The Nevada Department of Correction shall utilize a "plain English" notification system. This statewide universal approach shall initiate first responders. Followed by the secondary responders, based on initial reports. Some examples for each level are as following:

1. Level 1, mutual combat between two inmates, isolated and contained physical plant failure or compromise, or a single disruptive inmate
- ? \* 2. Level 2, multiple inmate fight, weapons present, staff assault, evidence of escape, or larger scale physical plant failure or compromise
3. Level 3, Escape, homicide, officer-involved lethal force or complete physical plant failure or compromise.

\* The Warden at each institution shall ensure the development of an Operational Procedure that shall identify responders/position, the systematic lockdown, and equipment deployed for each level. This Operational Procedure shall also include response to rural camps and Transitional Housing facilities.

#### **405.09 ESCAPE FROM SECURED PERIMETER**

1. If possible, prior to using firearms, an alert to the institution shall be broadcast by radio, attempts shall be made to apprehend or physically restrain an escapee or an attempted escapee.
2. If an officer observes an inmate located within the "No Man's Land," an immediate alarm shall be sounded to initiate a response then the following command in a loud and firm voice, shall be given, "Stop or I will shoot." A second alert to the institution shall be broadcast by radio, time permitting, to alert responding staff of the possible discharge of the weapon. If the inmate fails to stop and no other means of stopping the inmate is available, then the officer may fire a warning shot as outlined in this procedure.
3. If the inmate continues toward the inner perimeter fence, after verbal warnings and a warning shot has been discharged, additional warning shots may be discharged near the escaping inmate in an effort to gain compliance. The officer must exercise care to prevent a possible ricochet of the warning shots. (Wardens shall designate in operational procedures where warning shots will be discharged.)
4. Once an inmate has begun going over, under, or through the inner perimeter fence, (that is, feet have left the ground or crawling under or through), the following shall be done:

area, such as within a building, it would be inappropriate to use warning shots. Verbal commands shall be substituted.

3. Transportation Officers shall be armed with both lethal and less lethal tools in the event of the physical surroundings and the proximity of civilians would prevent the use of lethal tools.
4. Officers are required to cooperate with local law enforcement officials in any unusual or emergency situation involving inmates under the custody of the Department of Corrections.

#### **405.11 MEDICAL CARE AFTER USE OF FORCE**

1. Medical care which includes medical treatment and examinations shall be conducted by institutional medical staff when a Use of Force incident has occurred. When order has been restored, the inmate(s) who has been subjected to any Use of Force shall be examined by medical staff and provided medical care proportionate to the individual's injuries sustained. This examination shall be documented utilizing the Unusual Occurrence Report form DOC 2514. Inmates cannot refuse to be assessed, but can refuse treatment of any injuries sustained. All refusals of medical treatment shall be documented and included in the Use of Force incident files utilizing the Refusal of Medical Treatment form DOC 2523. Decontamination from chemical agents shall also be completed as soon as practical after the use of force. Refusal for decontamination shall be documented on NDOC form 2523 – Refusal of Medical Treatment. Photographs of the Inmate shall be completed on all Inmates who had force used upon them regardless of injuries. Copies of these photos shall be uploaded into NOTIS and placed in the Use of Force Incident File.
2. Any staff member involved in the Use of Force sustaining injuries shall be examined by NDOC medical staff and shall provide emergency medical care proportionate to the individual's injuries prior to transport to an appropriate healthcare facility. This examination shall be documented utilizing the Unusual Occurrence Report form DOC 2514.

#### **405.12 REPORTING OF USE OF FORCE**

In all cases the reporting of Uses of Force MUST be accomplished as soon as practical after the incident and before leaving the institution or going off duty. Any Use of Force shall be reported to the shift supervisors who shall ensure, once order has been restored and the involved inmate(s) are placed in secure housing, that written reports from all staff involved are completed. This includes custody officers, institutional staff, medical staff, volunteers or any persons that witnessed the Use of Force.

1. These reports shall be entered into the Nevada Offender Tracking Information System (NOTIS) for review by the appropriate supervisors.

5. The review panel shall review the actions of all staff members and inmate(s) involved in the Use of Force incident, including those actions leading up to the Use of Force, taking into account any NOTIS incident reports surrounding the time frame of the Use of Force, especially involving the staff member that used the force and the inmate that had the force used upon their person.
6. The review panel shall conduct in person, recorded interviews of all staff and inmate(s) involved in the Use of Force. Should the panel, as part of the review, desire to question/interview an employee involved in the use of force, the panel shall conduct all interviews in accordance with department procedures, as well as relevant provisions of NRS chapter 284 and 289. The panel does not have the authority to recommend discipline.
7. The review panel shall evaluate the Use of Force incident and prepare a written report on its evaluation and determination to the Warden, the Deputy Director of Operations and Inspector General within ten (10) days from commencement of the Use of Force review, to include:
  - A. Was the Use of Force justified;
  - B. Was the Use of Force within policy, procedures and training of the Department;
  - C. Could the Use of Force have been prevented;
  - D. Could this type of Use of Force be prevented in the future;
  - E. Any referral for investigation for possible disciplinary action for staff member(s) involved in the Use of Force.
  - F. Any recommended corrective action for staff member(s) involved in the use of force.
  - G. Any recommendation for any staff member that acted with distinction in the Use of Force; and
  - H. Any recommended changes or enhancements to policy, procedure, or training related to this Use of Force.
  - I. Any recommended changes or enhancements to the physical structure of the area related to this use of force

#### **405.13 SERIOUS USE OF FORCE INCIDENT REVIEWS**

1. Any Use of Force suspected to be excessive or unnecessary shall be immediately referred to and assigned to the Inspector General for investigation. In these circumstances the Use of Force Incident Review will not be completed.



7. The review panel shall evaluate the Use of Force incident and prepare a written report on its evaluation and determination to the Director and the Deputy Director of Operations within thirty (30) days from commencement of the Use of Force review, to include:
  - A. Was the Use of Force justified;
  - B. Was the Use of Force within policy, procedures and training of the Department;
  - C. Could the Use of Force have been prevented;
  - D. Could this type of Use of Force be prevented in the future;
  - E. Any referral for investigation for possible disciplinary action for staff member(s) involved in the Use of Force.
  - F. Any referral for investigation for possible corrective action for staff member(s) involved in the Use of Force.
  - G. Any recommendation for any staff member that acted with distinction in the Use of Force; and
  - H. Any recommended changes or enhancements to policy, procedure, or training related to this Use of Force.
  - I. Any recommended changes or enhancements to the physical structure of the area related to this use of force.
8. Any recommended corrective action being applied to a staff member shall be reported to the appointing authority via a memorandum that outlines the reason for the corrective action. A corrective action is not deemed a discipline.
9. Any findings that recommend disciplinary action be taken against a staff member shall be referred to the Inspector General and Director for their review and appropriate response; response may include, but not be limited to official assignment for Administrative Investigation.
10. Any findings that recommend a change or enhancement to a policy, procedure, or training shall be sent to the Director and Deputy Director of Operations.
11. Any findings that identifies that a staff member acted with distinction in the Use of Force shall be sent to the Director and Deputy Director of Operations.
12. The review panel report and its contents are confidential and not subject to dissemination except by order of the Director, Inspector General, or lawful court order.

EXHIBITS- C

EXHIBITS-C



# State of Nevada Department of Corrections

Investigation Detail Report  
For: AG Office

EXB  
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## Investigation

Investigator:  
Assigned Date:  
Report Due Date:  
Disposition Date:

IR Number: IR-2015-NNCC-000575  
Occurrence Date: 03/28/2015  
IA Number: IA-  
Institution: NNCC

## Narrative

On March 28, 2015 at approximately 2034, Correctional Officer C. Smith, Unit 5 officer, requested Via radio backup assistance for a disruptive inmate. Sgt. Roberson and Search and Escort responded to unit. Inmate had struck the officer in the face. Inmate was checked by medical and placed into Administrative Segregation. Unit officer and one responding officer completed C-1 paperwork. Both were seen by Institutional Medical. Photos were taken of inmate and officers. No officer released at this time. Warden Baca was advised. Message left for AW Schreckengost. Reports to follow from officers. ...[MSMITH, 03/29/2015 09:14:54] The inmate involved in this incident is inmate Joseph Mizzoni #68549 (5B-29A). Inmate Mizzoni was served with a notice of classification hearing and housed in 7A-38A. Inmate Mizzoni is on the communicable disease list. Officer Smith, C. was treated at CTRMC for a possible blood exposure and checked for injuries as a result of the incident. Officers Samsel and Grider were treated at CTRMC for possible blood exposure.

## Offender Involvement

NDOC ID	Offender Name	Participation
68549	MIZZONI, JOSEPH	Suspect
Comments:		

## Staff Involvement

Staff Name	Participation
SHERMAN, FRANK	Witness
Comment: Shift command reporting 019	

## ● Reports

**Report Type**  
INC028

**Report Detail**  
On March 28, 2015, I, Sergeant Frank Sherman, was arriving at Northern Nevada Correctional Center to work C-Graveyard Shift as the Acting Shift Lieutenant. At approximately 2035 hours, a radio call for back-up at Unit 5 was received from Correctional officer Christopher Smith. Sergeant Roberson, RMF Sergeant, and Sergeant John Henley, C-Graveyard Shift Sergeant, responded from Operations. I remained at operations to monitor the shift change for C-Graveyard Shift and the phones. I began checking the institutional cameras to check Unit 5 for any information. I was not able to see any of the incident on camera. I began checking the playback of the unit for any possible information. Nothing was seen. Inmates were seen mingling in the wings. At this time, Sgt. Crowder responded to the unit to assist.  
At approximately 2046 hours, Sgt. Henley advised that the institution would remain locked down for the evening and the incident was code 4. The inmate, later identified as Mizzoni, 68549, Unit 5 B 29 A, was being escorted to the Infirmary for further evaluation. After the evaluation and photos taken, Inmate Mizzoni was moved to Unit 7 A 38 A pending reclassification and disciplinary. The Institutional Count was delayed to complete this move.  
At approximately 2050 hours, Sgt. Henley returned to operations with Sgt. Roberson and briefed me on the incident. Search and Escort were in Unit 5 completing some random cell searches and one cell that was searched was Unit 5 B 29 where Inmate Mizzoni, 68549, resides. Unit 5 officer, Correctional Officer Christopher Smith, was monitoring the Unit rotunda. Inmate Mizzoni was becoming irate and disruptive and Officer C. Smith, went to calm the inmate. As the inmate became more irate, Officer Smith requested assistance by radio. C/O Smith was attempting to

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# State of Nevada Department of Corrections

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For: AG Office

## Investigation

Investigator:  
Assigned Date:  
Report Due Date:  
Disposition Date:

IR Number: IR-2015-NNCC-000575  
Occurrence Date: 03/28/2015  
IA Number: IA-  
Institution: NNCC

## Staff Involvement

### ● Reports

#### Report Type    Report Detail

place Inmate Mizzoni into restraints and had ordered the inmate to move to the wall. Inmate Mizzoni appeared he was going to comply but moved in an aggressive manner toward Officer Smith. C/O Smith used hands on force to attempt to control Inmate Mizzoni. C/O Smith radioed for Back up at this time. Inmate Mizzoni was able to get loose from Officer Smith and used a closed fist to swing at the officer. Inmate Mizzoni's closed hand struck Officer Smith on the right cheek. As officers arrived to assist at the incident the unit was secured. With Inmate Mizzoni restrained, C/O Grider, C/O Samsel and C/O Allison escorted the inmate to the infirmary for further evaluation.

At this time, Sgt. Henley had to leave the institution due to a family emergency. Sgt. Roberson remained on post as the second supervisor and assisted with reports. Sgt. Roberson did assist with completing the C-1 Paperwork for staff from this incident. C/O Smith was moved to Unit 2 to complete his paperwork and C-1 paperwork for possible injury from the incident. An initial evaluation was given by the institutional Medical Nurse, Stephanie Andrews. Photographs were taken of the injuries of the officer at this time.

Warden Baca was advised on the situation at approximately 2055 hours. A message was left on the cell phone for AW Ron Schreckengost. At approximately 0015 hours, it was discovered that Inmate Mizzoni had bled during the incident and he was screaming he was Hep C positive. I found that two other officers with C/O Smith may have been exposed to blood borne pathogens. I checked the Communicable list and did find Inmate Mizzoni was on it. At this time, Sgt. Roberson contacted C/O Smith and advised him he would be leaving as soon as we were able to get C-1 completed for him to take to the Carson Tahoe Regional Medical Center. The other officers were identified at C/O Lee Grider and C/O Paul Samsel. To release the officers as soon as possible, I had the institution below minimum security staffing. C/O Smith was released at approximately 0100 hours. C/O Grider and C/O Samsel were released at approximately 0330 hours to complete a blood draw. I had spoken with the Medical Department and it was unknown as to why Inmate Mizzoni was on the List. I was also advised that Inmate Mizzoni would have a blood draw for testing of Hep C on Monday, March 30, 2015.

#### Staff Name

#### Participation

ANDREWS, STEFANIE

Witness

Comment: Responding Medical Nurse

### ● Reports

#### Report Type    Report Detail

USEOF

On 3/28/2015 at approx 2100, Inmate Mizzoni was brought to medical for evaluation. I/m sustained a 1cm laceration above the Lt eye which required cleansing and steristrip. Dime sized abrasion to both knees were treated with bandaids. Small abrasion from handcuff noted to wrist, no treatment needed. Vital signs were stable and I/M was released back to unit with custody. At approx 2110 C/O Smith was brought to medical for evaluation. Vital signs were stable. Reddened area noted to Rt cheek and temple area. No broken skin noted. No other injuries noted. No complaints of vertigo, blurred vision or headache. Instructed C/O Smith to follow up per exposure protocol and work comp protocol. C/O Smith released back to duty w/o any restrictions and

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# State of Nevada Department of Corrections

Investigation Detail Report  
For: AG Office

## Investigation

Investigator:  
Assigned Date:  
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Disposition Date:

IR Number: IR-2015-NNCC-000575  
Occurrence Date: 03/28/2015  
IA Number: IA-  
Institution: NNCC

## Staff Involvement

### ● Reports

#### Report Type Report Detail

5. Myself and the three other officers departed unit 4 enroute to unit 5. Upon arrival Officers Allison, Ardinger, S. Smith, provided assistance to Officer C. Smith, while I began to disperse inmates from the immediate area, clearing the rotunda and securing inmates in their cells. As additional staff members arrived The area was secured. I then observed the escort of inmate Mizzoni #68549, from unit 5 to unit 8 for medical evaluation.

INC028

INC028

#### Staff Name

#### Participation

GRIDER, LEE

Witness

Comment: responding officer

### ● Reports

#### Report Type Report Detail

INC028

On 28 March 2015, I (C/O Lee Grider) was assigned to 1 Tower on C-Graves at The Northern Nevada Correctional Center.

At Approx. 2030 hrs, I heard a back-up/staff assault call coming from Unit 5 when I was getting ready to relieve swing shift. When I arrived at Unit 5, Inmate Mizzoni, #68549, was restrained in the prone position, under officer coverage. The inmate had to be moved to medical, as he was bleeding from his temple. However, by continuing to drop his weight, Mizzoni was resistant while staff attempted to assist him to his feet for movement to medical. I stepped forward and placed Mizzoni's right wrist in a rear wrist lock, while Officer Hightower did the same on the inmate's left side. As Mizzoni continued to drop his weight, I gave him several orders to stand up. Mizzoni refused, necessitating Hightower and myself to lift him to a standing position. Once Mizzoni was on his feet, we escorted him to Unit 8-A for medical evaluation.

Once the inmate was safely in Unit 8, SGT John Henley (Acting Shift Lieutenant) dismissed me to my post. I suffered a minor cut from the inmate's restraints to my right middle knuckle; C-1 submitted. —END OF REPORT

USEOF

On 28 March 2015, I (C/O Lee Grider) was assigned to 1 Tower on C-Graves at The Northern Nevada Correctional Center.

At Approx. 2030 hrs, I heard a back-up/staff assault call coming from Unit 5 when I was getting ready to relieve swing shift. When I arrived at Unit 5, Inmate Mizzoni, #68549, was restrained in the prone position, under officer coverage. The inmate had to be moved to medical, as he was bleeding from his temple. However, by continuing to drop his weight, Mizzoni was resistant while staff attempted to assist him to his feet for movement to medical. I stepped forward and slid my right hand through the crook of Mizzoni's right arm, took control of his right hand with mine, and twisted his wrist into a rear wrist lock. As Mizzoni continued to drop his weight, I gave him several orders to stand up. Mizzoni refused, necessitating me to pull the wrist lock I had him in so as to bring him to a standing position. Once Mizzoni was on his feet, I de-escalated my use of force and proceeded to escort him to Unit 8-A for medical evaluation.

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# State of Nevada Department of Corrections

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For: AG Office

## Investigation

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Assigned Date:  
Report Due Date:  
Disposition Date:

IR Number: IR-2015-NNCC-000575  
Occurrence Date: 03/28/2015  
IA Number: IA-  
Institution: NNCC

## Staff Involvement

### ● Reports

#### Report Type    Report Detail

reported to Unit 4 to assist with count as Officers were displaced due to the incident. End of Report.

Staff Name	Participation
PATCHEN, JEREMY	Witness
Comment: Responding Officer	

### ● Reports

#### Report Type    Report Detail

INC028

On March 28, 2015 at approximately 2030 while working at Northern Nevada Correctional Center as unit 3B officer, I Correctional Officer Patchen heard a call for "back up" to unit 5 over the hand held radio. I immediately responded to unit 5. When I arrived to unit 5 the inmate involved was already restrained. I stood by in case I was needed then returned to unit 3 when I was released by Sgt Henley. END OF REPORT

Staff Name	Participation
HIGHTOWER, JOEL	Witness
Comment: Responding officer	

### ● Reports

#### Report Type    Report Detail

INC028

While working my regular scheduled shift in Unit 10A at Northern Nevada Correctional Center on March 28, 2015, I Correctional Officer J. Hightower observed the following. At approximately 8:34pm Unit 5 Officer C. Smith called for Officer backup on his institutional radio. When I entered Unit 5 I observed that Officer Smith had marks on the right side of his face. I then observed Inmate Joseph Mizzoni (68549) restrained with partial restraints lying in the prone position in the Unit 5 rotunda. Inmate Mizzoni's legs were unsecured by any restraints so I secured his left leg until Correctional Sargent J. Henley arrived on the scene. Sgt. Henley instructed Officer L. Grider and I to escort Inmate Mizzoni to Unit 8A for medical evaluation as his face was bleeding. Inmate Mizzoni was non-compliant with Officer Grider's and my verbal orders to stand up by dropping his body weight to the ground when we were attempting to assist him to his feet. I put inmate Mizzoni's left wrist in a rear wrist lock while Officer Grider and I lifted him to his feet. Inmate Mizzoni was then escorted to Unit 8A for medical evaluation. Once Inmate Mizzoni was secured inside Unit 8A Sgt. Henley dismissed me back to my post in Unit 10A. END OF REPORT....

Staff Name	Participation
SMITH, SCOTT	Witness
Comment: responding officer	

### ● Reports

#### Report Type    Report Detail

INC028

I C/O Scott smith was in Unit 4 when I responded to Unit 5. When I got there Officer C. Smith

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# State of Nevada Department of Corrections

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### Investigation

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Assigned Date:  
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Disposition Date:

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Occurrence Date: 03/28/2015  
IA Number: IA-  
Institution: NNCC

### Staff Involvement

#### ● Reports

##### Report Type    Report Detail

assistance over the radio and I responded with Correctional Officer Ardinger. When Officer Ardinger and I got into unit 5 Correctional Officer C. Smith and inmate Mizzoni were on the ground struggling. I assisted Officer C. Smith by placing my left hand on Mizzoni's head so he was unable to bite or spit on the officers. I also assisted by placing my right knee against Mizzoni's left shoulder and my right hand on his right shoulder because Mizzoni continued to struggle and resist staff. I gave verbal commands to Mizzoni to quit resisting and to stop fighting. I assisted inmate Mizzoni get to his feet and he was escorted to unit 8 A for medical treatment. End of Report.

Staff Name	Participation
SMITH, CHRIS	Victim

Comment: officer struck by Inmate

#### ● Reports

##### Report Type    Report Detail

INC028

On March 28th, 2015 I Correctional Officer C. Smith was assigned to housing unit 5 of the Northern Nevada Correctional Center as the only Officer in the unit. At approximately 6:45pm I was approached by inmate Hermanson (#84666) stating that he placed a kite in my mailbox with important information. I then checked my mailbox during the 7:00pm count and retrieved the kite. The kite stated that there was tattoo equipment in the wall of Unit 5 A wing cell 2. I then called search and escort officers Allison, Ardinger, and S. Smith to assist me with cell searches to make it appear as random searches. I searched Unit 5A cell 2 and had negative results. I then randomly searched B wing cell 29 housing inmates Mizzoni (#68549) and Deyerle (#1010262) and had negative results. Search and Escort Officers then departed Unit 5 at approximately 8:30pm. Approximately 10 minutes later at 8:40pm inmate Mizzoni (#68549) approached my office in an aggressive manner. He smacked my door and said "C.O. Shove it up your ass" so I told inmate Mizzoni To place his hands on the wall and that he was being placed in restraints. I ordered the rest of the unit to lock down as I attempted to make a call for assistance on the radio and was unsuccessful due to inmate Mizzoni turning off the wall towards me with his elbow raised in an attempt to strike me. I then assisted inmate Mizzoni to the ground in an attempt to restrain him. Throughout the entire altercation I was verbally instructing inmate Mizzoni to "stop resisting". As I struggled with inmate Mizzoni on the ground he struck me with a closed fist to the right temple. I struggled to position him on the ground where he could not strike me again. I then ordered several inmates to "get back" because my rotunda was full of other inmates. It was at this time that I was able to gain control of inmate Mizzoni and call for backup on the radio. Search and Escort Officer Ardinger was the first to arrive in the unit. At this time I was able to get wrist restraints onto inmate Mizzoni. As soon as other Officers were able to take over restraining inmate Mizzoni I walked out of the unit to catch my breath. I remained at the front of my unit after responding officers had already removed inmate Mizzoni from my unit. I was then relieved by Search and Escort officers to go to medical for an evaluation and fill out a C-1 form. END OF REPORT.

USEOF

On March 28th, 2015 I Correctional Officer C. Smith was assigned to housing unit 5 of the Northern Nevada Correctional Center as the only Officer in the unit. At approximately 6:45pm I was approached by inmate Hermanson (#84666) stating that he placed a kite in my mailbox with

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Reference Name: NOTIS-RPT-OR-0248

Run Date: APR-04-16 11:07 AM

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# State of Nevada Department of Corrections

Investigation Detail Report  
For: AG Office

## Investigation

Investigator:  
Assigned Date:  
Report Due Date:  
Disposition Date:

IR Number: IR-2015-NNCC-000575  
Occurrence Date: 03/28/2015  
IA Number: IA-  
Institution: NNCC

## Staff Involvement

### ● Reports

**Report Type**    **Report Detail**  
INC028

On March 28th 2015 at approximately 2030 I, Correctional Officer Gamica responded to a back up call on the radio to Unit 5. Upon getting there Inmate Mizzioni #68548 was on the ground in restraints. I assisted in securing the unit and escorting the inmate to unit 8A. Upon getting to unit 8A the medical staff determined that the inmate was ok to move to unit 7A for housing. I, along with C/O Samsel and C/O Wyke escorted the inmate over to unit 7A and after securing the inmate in his cell left the unit. End of report.

...[NGARNICA, 04/05/2015 21:41:03] On March 28th 2015 at approximately 2030 I, Correctional Officer Gamica responded to a back up call on the radio to Unit 5. Upon arriving at Unit 5. Inmate Mizzioni #68549 was on the ground in restraints. I assisted securing the unit and escorting the Inmate Mizzioni to unit 8A for a medical evaluation. The medical staff determined that the inmate was ok and could be moved to Secure housing Unit 7 A. Along with C/O Samsel and C/O Wyke, I escorted the inmate over to unit 7A and secured the inmate in cell 7A38. End of report.

Staff Name	Participation
ARDINGER, ROBERT	Witness
Comment: Report Writer	
Staff Name	Participation
HIGHLINE, MICHAEL	Witness
Comment: responding officer	
Staff Name	Participation
SAMSEL, PAUL	Witness
Comment: Responding Officer	

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MIZZONI 313: DEF EXH C - 010

EXHIBITS - D

EXHIBITS - D

EXHIBIT 10

2-18-10

3-5-07  
11-6-07 (1)

(2)

WD CLERK

CASE NO. CF-0708024

VIDEO AND DISCIPLINARY TAPE 4-3-05  
AND ALL MEDICAL RECORDS

FILED

DEPT. 2

2010 FEB 18 PM 4:06

IN THE SEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

WHITE PINE COUNTY CLERK

IN AND FOR THE COUNTY OF WHITE PINE

DEPUTY

...

JOSEPH L. MIZZONI,

Plaintiff,

v.

NDOC WARDEN McDANIEL, et. al.,

Defendants

SHOWS A INMATE CAN  
RECEIVE VIEWING OF  
VIDEO TAPE

ORDER

Plaintiff Joseph L. Mizzoni filed his Motion Seeking Permission to Object to Joint Conference Report and Obtain Court Order Medical and Video CD-Rom and Reports on Incidents of all Excessive Force. Defendants have objected on the basis of the administrative regulations which govern Ely State Prison.

Plaintiff's motion to object to the Joint Case Conference Report is denied. Each party is required to set forth its list of exhibits and witnesses in the Joint Case Conference Report, whether or not the opposing side agrees. The decision of whether the exhibits will be admitted at trial and whether the witnesses will be allowed to testify is reserved for either pretrial motions, pretrial conferences or for trial, and is not appropriate at this time.

This court will not interfere with the administration or the administrative regulations governing Ely State Prison and order the production to plaintiff of items not allowed under Prison regulations. However, the items that plaintiff has asked to be produced are relevant or can lead to relevant material in this case. Plaintiff has asked for the release of his medical records to this court

EX-D


1 for trial. Therefore, defendants are ordered to produce to this court for in camera inspection:

- 2 1. All medical records pertaining to the injuries and treatment of plaintiff resulting
- 3 from the incidents of March 5, 2007 and November 6, 2007;
- 4 2. Any and all recordings of the incidents of March 5, 2007 and November 6, 2007
- 5 whether on CD-ROM or in any other form; and
- 6 3. Any recording of the disciplinary hearing held on April 3, 2007.
- 7

8 IT IS SO ORDERED.

9 Dated this 16th day of February, 2010.

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12 MIRIAM SHEARING

13 SENIOR JUDGE

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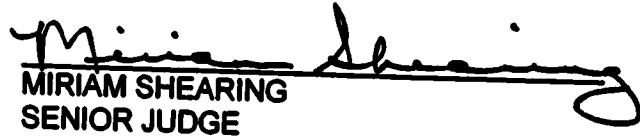


EX-D-

1 The trial will start on November 9, 2010 and continue Tuesdays through Fridays until  
2 concluded or by February 19, 2010.

3 IT IS SO ORDERED.

4 Dated this 16th day of February, 2010.

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8 MIRIAM SHEARING  
9 SENIOR JUDGE  
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EXHIBITS-E

EXHIBITS-E

EX-E 9

Log Number

20062998671

NEVADA DEPARTMENT OF CORRECTIONS  
INFORMAL GRIEVANCE

NAME:

Joseph Mizzoni

I.D. NUMBER:

68549

INSTITUTION:

NNCC Prison

UNIT:

7-B-62

GRIEVANT'S STATEMENT:

I am Grieving ~~all~~ all for All Video Camera  
 Stations inside and out Unit 5, Unit 8, and Unit 4 outside B-C Wings  
 and from Unit 8 to Unit 7-B 3B and all HAND HELD CAMERAS  
 AND VIDEOS AND PICTURES AND THOSE ABOVE AREAS ON THE  
 NIGHT OF 3-28-15 from 8PM TO 930PM including P/O Smith

## SWORN DECLARATION UNDER PENALTY OF PERJURY

INMATE SIGNATURE:

Joseph Mizzoni

DATE:

4-15-15

TIME:

8PM

GRIEVANCE COORDINATOR SIGNATURE:

D. CLARK

DATE:

4/16/15

TIME:

11:55 PM

GRIEVANCE RESPONSE:

CASEWORKER SIGNATURE:

DATE:

GRIEVANCE UPHELD

GRIEVANCE DENIED

ISSUE NOT GRIEVABLE PER AR 740

GRIEVANCE COORDINATOR APPROVAL:

DATE:

INMATE AGREES

INMATE DISAGREES

INMATE SIGNATURE:

Joseph Mizzoni

DATE:

6-5-15

FAILURE TO SIGN CONSTITUTES ABANDONMENT OF THE CLAIM. A FIRST LEVEL GRIEVANCE MAY  
 BE PURSUED IN THE EVENT THE INMATE DISAGREES.

Original:

To inmate when complete, or attached to formal grievance

Canary:

To Grievance Coordinator

Pink:

Inmate's receipt when formal grievance filed

Gold:

Inmate's initial receipt

RECEIVED

APR 16 2015

AWP - NNCC  
 DOC 3091 (12/01)

Video  
 Evidence  
 Request  
 for 3-28-15

JK  
 Box

EX-60

EX-E

**NEVADA DEPARTMENT OF CORRECTIONS  
GRIEVANT'S STATEMENT CONTINUATION FORM**

NAME: Joseph L. Mizton I.D. NUMBER: 68519  
 INSTITUTION: NNCC Prison UNIT #: 7-B-62  
 GRIEVANCE #: \_\_\_\_\_ GRIEVANCE LEVEL: Informal

GRIEVANT'S STATEMENT CONTINUATION: PG. 2 OF 3

All ~~and~~ Search and Escort OFFICES, NURSES, AND ALL INMATES THAT SAW MYSELF AND MR SMITH AROUND US and IN RUTUNDA on 3-28-15 between 8pm + 930pm. I would Request all NAMES of Search and Escort Officers and any other Officers involved with the whole incident of handling me from Start to Finish and was present there. I have Ms Robertson (soeg) Officer, I have Smith (C10), There Search and Escort Officer Ardinger. I would request all of there Full NAMES AS Employees of Nevada Dept. Of Corrections here at Northern Nevada Correctional Center. and Inmate Witnesses in Rutunda on Video that C10 Smith said was around us and in Rutunda only as witness to have my lawyer to request as witnesses or at a minimum have all there NDOC Perks and Inmates to be preserved for trial Criminal and Civil as well as all Video Pictures. I don't appreciate having your C10s playing and this Administration saying they are going

Original: Attached to Grievance  
 Pink: Inmate's Copy

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NEVADA DEPARTMENT OF CORRECTIONS  
GRIEVANT'S STATEMENT CONTINUATION FORM

E-E

NAME: Joseph Mizrahi I.D. NUMBER: 68549  
INSTITUTION: HNCC Prison UNIT #: 7-B-62  
GRIEVANCE #: \_\_\_\_\_ GRIEVANCE LEVEL: Informal  
GRIEVANT'S STATEMENT CONTINUATION: PG. 3 OF 3

to Dub the Videos and say they were going to make it look like I hit C/O Smith. I Didnt hit him and this is Illegal obstruction of Justice and C/O Smith doesnt use on his original Notice of Charges that he has Video or witnesses on the evidence part of that Notice of Charges. I dont need to be Interrogated by you guys and all other ways of minubulation. Your C/O that escorted me to the Unit 7-B-38 Some what read my Miranda Rights so if you want to interrogate a question we do it infront of my lawyer now. I will go to my Disciplinary ad Unit Video and witnesses that saw any thing in that Rutunda. Wilf V. McDowell.

There is No Video Camers Behind the Unit 5 Bull Access for any video cam C/O?

( I Grievd All Dto Issues: What Happen 3-28-15 and NO Medical treatment still to this day 4-15-15. )

Original: Attached to Grievance  
Pink: Inmate's Copy

EXHIBITS F

EXHIBITS- F



# ~~EXHIBIT L~~

## Declaration of Ronald Schreckengost

CASE # 3:15-CV-00313-MMD-VRC

Plaintiff not allowed to counter a response  
to this Declaration. See: (Pg 4 Line 23-28) to  
(Pg 5 Line 1-15)

# ~~EXHIBIT L~~

EXECUTED this 5<sup>th</sup> day of December, 2016.

  
RONALD SCHRECKENGOST